FINANCIAL ADVISORY SERVICES

Aged care advice is becoming an increasingly important area for accountants offering professional advice. The combination of an ageing population and a complex set of rules for accommodation choices also further create opportunities for those willing to offer advice.

The average age of a person moving into a hostel or nursing home is approximately 82. For this reason, the person needing care is less likely to be your client and more likely to be their children, also senior baby boomers.

The following are examples of the key questions clients may ask when seeking aged care advice:

- whether to retain or sell the family home
- whether to rent their home
- how to pay for the accommodation bond – periodic or lump sum
- whether to hold current investments, and
- what new investments they should also consider.

The complex rules around aged care housing means this is the area in which most clients will seek assistance. In many cases, the need for residential care requires fast action and decisions at a time when family members are under considerable stress, meaning they need reliable advice from a trusted adviser.

A range of advice can be provided outside of the Australian Financial Services (AFS) licensing regime. However, inappropriate advice can have adverse effects on entitlements, particularly to the Age Pension, resulting in potential liability. It is, therefore, imperative that before you provide advice in this area you have a thorough understanding, including understanding the consequences of certain actions.
This guidance note focuses on:
1. the need for specialist knowledge when providing aged care advice
2. licensing and aged care advice
3. advice you can provide if you are not licensed, and
4. providing licensed advice.

Key changes

A number of important changes to the aged care system took effect on 1 July 2014 and 1 January 2016. Before you provide any advice in regards to aged care you must first ensure you are proficient with these changes and the potential impact on the client.

More information is available on the Commonwealth Department of Social Services website.

1. SPECIALIST KNOWLEDGE IN AGED CARE

The complexities of hostel and nursing home accommodation are at the end of the continuum of aged care choices, which need to be understood by anyone advising in this area.

Understanding Centrelink eligibility is also critical, such as the treatment of continued ownership of the family home in calculating eligibility for the Age Pension. There are also different impacts on entry costs and on ongoing fees in residential care related to assessment for the pension.

Financial decisions taken throughout retirement require an analysis of the implications for current or future Age Pension eligibility as well as being aware of concessions available.

CPA Australia recommends that if you are working with retiree clients that you develop the specific skills and knowledge required to ensure the provision of appropriate professional advice.

2. LICENSING AND AGED CARE ADVICE

Australian Financial Services licence

The Corporations Act 2001 does not specifically capture advice regarding aged care accommodation as financial product advice. Therefore not all aged care advice will require you to be licensed under an AFS licence, provided the advice:

- is restricted to information and advice about fees and services in aged care
- is restricted to factual information about any financial products or strategies, and
- does not lead to any specific or implied recommendations to purchase, sell or retain a financial product.

Provided you have the knowledge and skills, you can advise a client on the process to be assessed for entry to a hostel or nursing home and calculate the fees that would be payable. Factual information can also be provided about the impact of investments on these fees without being licensed. However, you cannot recommend strategies to rearrange such investments unless you are appropriately licensed.
Australian Credit licence

Advice regarding consumer credit facilities is regulated under the National Consumer Credit Protection Act 2009 (National Credit Act), which also implemented the Australian Credit licensing regime for the provision of consumer credit advice and services, as well as responsible lending conduct requirements.

You must hold an Australian Credit licence (ACL), or be a credit representative of an ACL, and adhere to the obligations of the National Credit Act to provide advice on these products.

This includes reverse mortgages, which are only available to people over the age of 55.

Property

Advice on buying or selling property, including the family home, is exempt from licensing provisions. However, advice on or the provision of credit to purchase, renovate or refinance a residential investment property is regulated under the National Credit Act.

Centrelink advice

The provision of information about Centrelink entitlements is not restricted to licensed financial planners. However, care needs to be taken to ensure you do not provide advice or recommendations that may be related to financial products when providing such advice if you are not appropriately licensed. If you do provide information in this space it is critical that you ensure your knowledge is current.

3. ADVICE YOU CAN PROVIDE IF YOU ARE NOT LICENSED

CPA Australia members must always be mindful that unless they are appropriately licensed, their ability to consider all the issues and provide comprehensive recommendations is limited.

The following section provides guidance on what advice you can provide if you are not licensed, noting that licensing refers to the AFS licensing or the ACL regime.

Accommodation options

<table>
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<tr>
<th>YOU CAN</th>
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| Discuss the choices in aged care accommodation:  
  - own home  
  - granny flat rights  
  - retirement village  
  - hostel  
  - nursing home. | Discuss the sources of funding from a financial product (e.g. superannuation, investments). |
| Perform calculations relating to specific investment holdings. | Provide a recommendation to sell a financial product. |
TIP - Encourage clients to talk to their family and GP

While the decision to go into a hostel or nursing home is based on the level of care needed, clients have a lot more choice (and less urgency) when considering other accommodation options such as remaining in their own home, granny flats and retirement villages.

It’s important that you encourage clients to consider all the issues of their decision, not just the financial implications. There is no point recommending a client stay in their own home if they do not have a carer who will be able to support them with that choice.

Eligibility to enter residential care (hostel or nursing home) is made by an Aged Care Assessment Team (ACAT) or ACare Assessment Service (ACAS) in Victoria, comprising doctors, social workers and other health professionals.

Private accommodation

<table>
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<tr>
<th>YOU CAN</th>
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<tbody>
<tr>
<td>Advise on issues relating to aged care housing in private accommodation:</td>
<td>Discuss any financial product to invest the proceeds from the sale of a house.</td>
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<tr>
<td>• calculations related to costs of living in own home</td>
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<tr>
<td>• own home outside asset test</td>
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<tr>
<td>• downsizing options</td>
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<tr>
<td>• options of selling the house to the children</td>
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<tr>
<td>• pension loan scheme through Centrelink</td>
<td></td>
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<tr>
<td>• independent living services</td>
<td></td>
</tr>
<tr>
<td>• issues of granny flat rights and determination of Centrelink entitlements</td>
<td></td>
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<tr>
<td>• capital gains tax implications of creating a granny flat right.</td>
<td></td>
</tr>
<tr>
<td>Perform calculations relating to specific investment holdings.</td>
<td>Provide a recommendation to sell a financial product.</td>
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<td></td>
<td>Provide advice regarding using a reverse mortgage to release equity.</td>
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</table>

TIP - Ensure advice takes into account the impact on the Age Pension

There is a very real danger of reducing a client’s Centrelink entitlement to the Age Pension with reverse mortgage products. Where a lump sum is borrowed against equity, the first $40,000 is exempt from the asset test for 90 days while the balance is assessable immediately. The rules are tighter for loans against an investment property.

Centrelink also has specific rules relating to homeowner status for the purposes of calculating the Age Pension. Beware being caught by the deprivation rules. The balance from the sale of the home may impact on the assets test, depending on where it is placed. The main danger is that in selling the home, a pensioner/couple can convert an assets-test exempt asset into one that will be used in the assets test.
## Residential villages

<table>
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| Advise on retirement village housing including:  
  - ownership structures (many different arrangements)  
  - lifestyle questions, including option of one partner needing hostel or nursing home accommodation  
  - impact of selling the home on Age Pension. | Advise on the sale of financial products, such as shares, to fund retirement housing. |
| Advise on issues regarding the consideration payable when buying into a retirement village which has no difference legally to the advice in buying a family home or even an investment property. | Recommend the investment of surplus funds into a financial product. |
| Provide advice on how to use a financial product to maximize pension eligibility. | Discuss investment issues related to financial products. |

**TIP - Be sure you understand the ownership structure of the village and contractual obligations**

Buying into a retirement village gives rise to a number of different issues that need to be considered from the client’s perspective that don’t normally exist with other housing choices, e.g. automatic redecorating fees charged irrespective of the ownership period or forced sale when moving to higher care. Some villages operate on strata title while others have lease arrangements.

To illustrate some areas that may have different issues from other housing questions, consider: financial arrangements, services, fees; location and local services; contracts; entry contribution and conditions to refund; time wait for refunds; rules e.g. pets, visitors; insurance and maintenance; and access to hostel and nursing home care.

As with granny flat rights, it is important to determine how entering a retirement village will affect their Age Pension. If homeowner status is determined for the retirement village, a family home that is retained will be treated as an investment property.
### Hostels and nursing homes – entry costs

<table>
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<tr>
<th>YOU CAN</th>
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<tr>
<td>Advise on entry costs in hostels and nursing homes and assist with entry, including:</td>
<td>Review strategies to improve Age Pension or reduce fees if the review involves financial product.</td>
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<tr>
<td>• organise ACAT assessment</td>
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<tr>
<td>• choose a facility and put name on waiting list</td>
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</tr>
<tr>
<td>• assess entry costs and payment options and impact on Age Pension</td>
<td></td>
</tr>
<tr>
<td>• decide whether to sell or retain former home</td>
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<tr>
<td>• determine whether the person is assessed as homeowner or non-homeowner</td>
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<tr>
<td>• compare accommodation bonds and payment approaches</td>
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<tr>
<td>• determine total income, including Age Pension</td>
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<tr>
<td>• calculate ongoing fees – basic daily care fee and income-tested daily care fee.</td>
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<tr>
<td>Recommend the sale or purchase of a financial product to improve Age Pension entitlements or reduce fees.</td>
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<tr>
<td>Advise on the investment of proceeds from the sale of a former home into a financial product.</td>
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<td>Recommend the investment of assets to generate required income and preserve capital.</td>
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TIP - Evaluate whether to sell or retain the home

For both hostels and nursing homes, the impact of whether the former home is retained or sold will have even greater repercussions than for other accommodation choices. As well as impacting the eligibility for the Age Pension it also affects both the determination of entry costs and the ongoing daily care fee.

So that you can best advise your clients, ensure that you can:

- differentiate between hostels (low level care) and nursing homes (high level care)
- differentiate between bond/periodic payments (hostels) and accommodation charges (nursing homes)
- compare facilities (where time gives a choice), including financial stability
- determine what are assessable assets under aged care legislation
- calculate the impact of deprivation rules (gifting), e.g. of family home
- distinguish between the impact of retaining or selling the family home on both entry costs and Centrelink status (including the choice of a periodic payment or lump sum)
- distinguish between the advantages of concessional places and the limited availability of such places
- determine how the bond is set and paid (and retained) for a hostel.

Hostels and nursing homes – ongoing fees

<table>
<thead>
<tr>
<th>YOU CAN</th>
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<tbody>
<tr>
<td>Calculate ongoing fees for hostels and nursing homes:</td>
<td>Provide strategic advice using financial products to ongoing fees through financial products.</td>
</tr>
<tr>
<td>• calculate the basic daily care fee</td>
<td></td>
</tr>
<tr>
<td>• calculate income-tested daily care fees</td>
<td></td>
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<tr>
<td>• apply strategies to reduce ongoing fees.</td>
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</table>
The rules applying to the residential aged care means test changed on 1 January 2016.

From 1 January 2016, all new Residential Care recipients will have rental income from their former principal home included in their aged care means test.

Previously, rental income from the former principal home was only included in the test if lump sum accommodation payments were made. It was not included if periodic accommodation payments or a combination of periodic and lump sum accommodation payments were made.

The new rule won’t affect consumers if they entered care before 1 January 2016, including if they:
- took social or hospital leave before 1 January 2016 and re-enter care after 1 January 2016, or
- started pre-entry leave, making arrangements to enter an aged care service or transfer from one service to another, before 1 January 2016 and enter care after 1 January 2016

After 1 January 2016, if they are formally discharged from Residential Care for more than 28 days, rental income from their former principal home will be included in the aged care means test when they re-enter care.

Concession Cards

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<tr>
<td>Discuss concession card eligibility such as seniors cards, Commonwealth seniors health cards or low income health card.</td>
<td>Recommend selling, gifting or buying any assets as part of a restructuring of an investment portfolio in order to meet the Asset Test.</td>
</tr>
<tr>
<td>Discuss age pension eligibility and benefits such as:</td>
<td>Recommend restructuring an investment portfolio of financial products to increase pension entitlements.</td>
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<tr>
<td>eligibility and the means test</td>
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<td>rates of payment</td>
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<td>pharmaceutical allowance</td>
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<td>rent assistance</td>
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<td>pension bonus scheme</td>
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<td>issues of gifting and deprivation.</td>
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TIP - Consult with Centrelink for assistance on social security payments

For every $1000 over the Assets test threshold, the pension is reduced by $1.50. This rate is due to change to $3.00 from 1 January 2017. If assisting clients in this area, be aware that rates and thresholds change every quarter.

4. PROVIDING LICENSED ADVICE

Following the Future of Financial Advice (FoFA) reforms, a financial adviser must act in the best interests of the client and give priority to the interests of the client when providing personal advice to a retail client.

So, what does this mean?
ASIC has formulated a number of basic policy principles as stated in Regulatory Guide 175 (RG 175.214) which will guide its administration of the best interests duty and related obligations:

a) the provisions are intended to enhance trust and confidence in the financial advice industry
b) increased trust and confidence in the financial advice industry should lead to more consumers accessing financial advice
c) the provisions should lead to a higher quality of advice being provided compared to the general standard of advice previously being provided under s945A and 945B
d) a reasonable advice provider should believe that the client is likely to be in a better position if the client follows the advice. For more information, see RG 175.224–RG 175.231
e) the best interests duty in s961B, the appropriate advice requirement in s961G and the conflicts priority rule in s961J are separate obligations that operate alongside each other and apply every time personal advice is provided.

Furthermore, if the advice provided does relate to a financial product(s) with an investment component, ASIC consider the ‘relevant personal circumstances’ of the client will normally include the client’s:

a) need for regular income (e.g. retirement income)
b) need for capital growth
c) desire to minimise fees and costs
d) tolerance for the risk of capital loss, especially where this is a significant possibility if the advice is followed
e) tolerance for the risk that the advice (if followed) will not produce the expected benefits. For example, in the context of retirement advice, this may include considering longevity risk, market risk and inflation risk
f) existing investment portfolio
g) existing debts
h) investment horizon
i) need to be able to readily ‘cash in’ the investment
j) capacity to service any loan used to acquire a financial product, including the client’s ability to respond to any margin call or make good any losses sustained while investing in leveraged products
k) tax position, social security entitlements, family commitments, employment security and expected retirement age.

Note: this is not an exhaustive list.

As a licensed adviser you must:

- **Know your client**: work out their situation, objectives, needs and their financial literacy level.
- **Have a reasonable basis for advice**: know your product and the consequences of your advice, ensure the advice is appropriate for the client.
- **Comply with statement of advice (SOA) requirements**: the SOA must clearly and in simple terms set out your advice, the basis for your advice, the costs, benefits and any significant consequences for your client should they act upon the advice. Remember your disclosure requirements under s.947D (additional requirements when the advice recommends the replacement of one product with another). Incomplete client information does not negate your obligation to know your client and have a reasonable basis for your advice.
- **Act in the best interests of your client**: Part 7.7A of the Corporations Act as well as APES 110 *Code of Ethics for Professional Accountants* require that you act in the best interests of your clients.
REFERENCES

CPA Australia

- Future of Financial Advice (FOFA) reforms
- The national credit reform package and your options
- SMSF advice and the removal of the accountant’s exemption
- Tax & Social Security Guide

CPA Australia and the Third Age Network have also compiled guidance to help practitioners with the awareness, recognition, prevention and remediation of the financial abuse of older people.

Australian Government and financial services regulator

- Corporations Act 2001

Commonwealth Department of Health and Ageing

- Aged Care Australia

Commonwealth Department of Social Services

- My Aged Care portal
- Other ageing and aged care information

Commonwealth Department of Human Services

- Centrelink

Australian Securities and Investment Commission (ASIC)

- RG 175 Licensing: financial product advisers – conduct and disclosure
- Information and resources for the National Credit Act

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